

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

OCT 25 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JASON HAMBLIN,)	
)	
Petitioner/Appellant,)	2 CA-CV 2010-0066
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
CLARICE PAQUETTE,)	Rule 28, Rules of Civil
)	Appellate Procedure
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100DO200901143

Honorable Kevin D. White, Judge

AFFIRMED

Jason Hamblin

Scottsdale
In Propria Persona

The Law Offices of John R. Gaertner, P.C.
By John R. Gaertner, Jr.

Scottsdale
Attorney for Respondent/Appellee

V Á S Q U E Z, Presiding Judge.

¶1 In this child custody action, appellant Jason Hamblin appeals from the family court's partial award of attorney fees to appellee Clarice Paquette. For the reasons that follow, we affirm.

Factual and Procedural History

¶2 Jason and Clarice are the parents of two children born out of wedlock. After the parties' relationship had ended, Jason filed a petition in July 2009 to establish child custody and parenting time. He also filed a separate petition for emergency temporary custody, alleging that Clarice was abusing prescription drugs and was a danger to the children. Following a hearing that same month, the family court awarded Clarice temporary primary custody of the children, with Jason having reasonable parenting time. The court also ordered Clarice to undergo periodic drug testing. At a hearing in September 2009, the court affirmed its prior custody order and ordered Jason to pay one-half of Clarice's drug testing fees.

¶3 In October 2009, Jason filed an emergency petition to modify the temporary orders, claiming Clarice was using drugs that would not show up in drug tests. Clarice filed a response denying the allegations and a counter petition for sole custody of the children. A custody trial eventually was held in early December 2009, and on January 21, 2010, the family court issued its under-advisement ruling in which it granted sole legal and primary physical custody of the children to Clarice, with Jason having parenting time as recommended in the Conciliation Services Report. The court ordered Jason to pay twenty-five percent of Clarice's attorney fees as well as the remainder of his unpaid share of the fees for drug testing.¹ Jason filed his notice of appeal on February 17, 2010.²

¹The family court ordered Clarice's attorney to submit an application for attorney fees and a "China Doll" affidavit within ten business days of the ruling, an obvious

Discussion

¶4 In his opening brief, Jason contends the family court erred in awarding custody to Clarice, ordering him to pay a portion of Clarice’s drug testing costs, and ordering him to pay twenty-five percent of Clarice’s attorney fees. However, in his “Notice of Appeal Regarding Attorney’s Fees,” he only “ask[s] for attorneys fees and any court expenses to be reconsidered” in light of his financial circumstances.

¶5 We only consider rulings that have been raised in the notice of appeal. *See Brown v. Karas*, 73 Ariz. 62, 66, 237 P.2d 799, 801 (1952). Jason’s assignment of error is directed at the family court’s award of attorney fees. “An examination of the notice of appeal indicates that no appeal was taken from the ruling[s] of the court” awarding custody of the children to Clarice and ordering him to pay a portion of the fees for drug testing. *Id.* And, claims for attorney fees are treated as claims separate from the related judgment concerning the merits of the underlying action. *See Ariz. R. Civ. P. 54(b)*. Consequently, an appeal from a determination of attorney fees does not also include an appeal of the court’s ruling on the other claims. *See Britt v. Steffen*, 220 Ariz. 265, ¶ 22,

reference to *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (App. 1983). The affidavit was filed on February 24, 2010, after the ten-day deadline that the court had set. However, Jason does not contend on appeal that the fee application was untimely filed. And in any event, a trial court has the discretion to accept and grant untimely applications for attorney fees. *Nat’l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 38, 119 P.3d 477, 485 (App. 2005).

²The family court did not issue a final judgment specifying the amount of attorney fees until March 10, 2010, after Jason filed his notice of appeal. An appeal from an award of fees can involve a challenge to the court’s statutory authority for the award, the amount ordered, or both. Because Jason appears to be challenging the fact that he was ordered to pay *any* fees, we treat his appeal as timely filed on that basis and, accordingly, address that issue only.

205 P.3d 357, 362 (App. 2008) (court’s ruling on attorney fees separate from court’s decision on merits). The other claims are “therefore not before us and will not be considered.” *Brown*, 73 Ariz. at 66, 237 P.2d at 801; *see also Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 38, 161 P.3d 1253, 1263 (App. 2007) (review on appeal limited to rulings specified in notice of appeal).

¶6 We review a trial court’s decision whether to award a party attorney fees and the amount of that award for an abuse of discretion. *See Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570-71, 694 P.2d 1181, 1184-85 (1985). However, Jason does not claim the family court abused its discretion or lacked the authority to award fees. He states only that he should not have to “[r]eimburse[] . . . 25% of [Clarice]’s attorney’s fees” because “as of January 10, 2010[, he] has been unemployed due to a downturn in the construction industry.” He does not support this claim with citations to the record, authority, or argument. *See Ariz. R. Civ. App. P. 13(a)(6)*. It is therefore waived, and we do not consider it further. *See Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) (“Issues not clearly raised and argued in a party’s appellate brief are waived.”).

Disposition

¶7 For the reasons stated above, we affirm.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Judge

/s/ *Virginia C. Kelly*

VIRGINIA C. KELLY, Judge